



Bart L. Graham
Commissioner

State of Georgia
Department of Revenue

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NOTICE

RE: PROPOSED RULE 560-12-2-.111 "Computer Software and Computer-Related Services."

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-12-2 of the Rules and Regulations of the State of Georgia by adopting new Rule 560-12-2-.111 entitled "Computer Software and Computer-Related Services." The new Rule is being proposed to reflect several of the comments and responses received from interested parties on the prior proposed Rule regarding computer software and computer-related services, which was issued on May 10, 2005 as Notice Number SUT-2005-1.

Attached with this notice is an exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. § 48-2-12.

The Department of Revenue shall consider the adoption of the proposed Rule at 10 am on January 17, 2006 in Suite 15210 of the Department's headquarters at 1800 Century Blvd. NE, Atlanta, GA 30345-3205.

The Department must receive all comments regarding the proposed Rule from interested persons no later than 10 am January 17, 2006. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-6651. **Please reference "Notice Number SUT-2005-8" on all comments.**

Date: December 9, 2005

Bart L. Graham
Commissioner, Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

Rule 560-12-2-.111 Computer Software and Computer-Related Services

The purpose of proposed Rule 560-12-2-.111 is to provide guidance regarding the applicability of Georgia sales and use tax to computer software and computer-related services.

Paragraph (1) explains the purpose of the Rule.

Paragraph (2) sets forth relevant definitions for the terms used in the Rule.

Paragraph (3) sets forth the general provisions for taxation of software delivered via a tangible medium.

Paragraph (4) sets forth the general provisions for taxation of software delivered electronically.

Paragraph (5) provides guidance regarding software installation and maintenance agreements.

Paragraph (6) provides guidance concerning the application of sales and use tax to various transactions related to computer software and computer-related services.

**RULES
OF
DEPARTMENT OF REVENUE
SALES AND USE TAX DIVISION**

**CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS**

560-12-2-.111 Computer Software and Computer-Related Services.

560-12-2-.111 Computer Software and Computer-Related Services.

(1) **Purpose.** This Rule sets forth the application of Georgia sales and use tax concerning the sale or use of computer software and computer-related services.

(2) **Definitions.** For the purposes of this Rule, the following definitions and explanations of terms shall apply:

(a) “Application program” means a set of statements or instructions that when incorporated in a machine-usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result for the end user. Application programs include any other computer software that does not qualify under subparagraph 2(h) or 2(n).

(b) “Computer” means the components and accessories that constitute the physical computer assembly that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. A computer includes but is not limited to these components and accessories: a central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or

reader, terminal, printer, plotter, modem, document sorter, and optical reader.

(c) "Computer-related services" means services including, but not limited to, computer programming, installation, time-sharing, consulting, training, data processing, system testing, and information retrieval.

(d) "Computer software" means any computer data, program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the foregoing, the term "computer software" shall include operating programs, application programs, system programs, and any other subdivisions (such as assemblers, compilers, generators, and utility programs).

(e) "Custom computer software" means computer software, including custom updates, which is designed and developed by the author to the specifications of a specific purchaser. Any subsequent sale of custom software to a different purchaser, customer, person, or entity shall be deemed the sale of prewritten computer software.

(f) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(g) "Load and leave" means delivery to the purchaser by use of tangible storage media where such tangible storage media is not physically transferred to the purchaser.

(h) "Operating program" means a set of statements or instructions that when incorporated into a machine or device having in-

formation processing capabilities is an interface between the computer hardware and the application program or system program.

(i) "Prewritten computer software," also known as "canned computer software," means computer software that is designed, prepared, or held for general distribution or repeated use, or software programs developed in-house and subsequently held or offered for repeated sale, lease, license, or use.

(j) "Software license agreement" means the transfer of possession and the right to use computer software for the purpose of reproduction or other use in a computer.

(k) "Software maintenance agreement" means providing error corrections, fixes, improvements, technical support upgrades and updates to purchased or licensed computer software under a single agreement.

(l) "Streamlined Sales Tax Project" ("SSTP") is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The SSTP's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The SSTP will develop measures to design, test and implement a sales and use tax system that simplifies sales and use taxes.

(m) "Streamlined Sales and Use Tax Agreement" describes the agreement developed by the Streamlined Sales Tax Project, which provides for uniform definitions, terms of art, collection and registration responsibilities, governing board procedures, and other articles of importance related to sales and use tax. These items will

provide for simplification and uniformity when adopted by the implementing states.

(n) “System program” means a set of statements or instructions that interacts with the operating program that is developed, licensed, and intended to build, test, manage, or maintain application programs.

(3) Computer software sold in a tangible medium.

(a) Prewritten computer software. The sale, lease, rental, license, or use of prewritten computer software is subject to sales and use tax when sold in a tangible medium. Prewritten computer software, even though modified or enhanced to the specifications of a purchaser, remains prewritten computer software.

1. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be anything other than prewritten computer software.

2. Prewritten computer software includes computer software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold in a tangible medium to a person other than the specific purchaser.

(b) Custom computer software. The sale, lease, rental, license, or use of custom computer software is a professional service transaction not subject to sales and use tax.

1. A purchaser may receive custom software by means of a tangible medium without changing the taxability of the purchase. The transfer to the purchaser in a tangible medium is deemed to be merely an incidental part of the sale of a nontaxable professional service.

2. Sales of multiple copies or license agreements of custom software to the original purchaser are not subject to sales and use tax. Custom software becomes prewritten computer software when it is sold to someone other than the person for whom it was designed and developed.

3. Charges for custom computer software that are not separately stated on the dealer's invoice from the sale, lease, or rental of hardware, machinery, or equipment are considered subject to the tax as part of the hardware, machinery, or equipment sale.

(c) Modified prewritten computer software.

1. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software.

2. If there is a separately stated charge on the dealer's invoice for the modification or enhancement of prewritten computer software, the charge for modification or enhancement is not subject to sales and use tax.

(4) **Computer software sold in an intangible form.**

(a) Computer software delivered electronically is not a sale of tangible personal property and therefore is not subject to sales or use tax. The dealer's invoice, purchase contract, or other documentation must indicate the method of delivery. If the method of delivery is not indicated on the dealer's invoice, purchase contract, or other documentation, delivery will be presumed to have been made through a tangible medium, and the burden will be upon the

taxpayer to establish to the satisfaction of the Department that the computer software was delivered electronically.

(b) If a dealer delivers computer software electronically and also provides the same computer software to the purchaser in a tangible medium, the transaction shall be treated as the taxable sale of tangible personal property unless the software qualifies as custom software.

(5) Computer software installation and maintenance agreements.

(a) Computer software installation services. Charges for computer software installation services are not subject to sales and use tax when such charges are separately stated on the dealer's invoice.

(b) Software maintenance agreements – charges bundled. Software maintenance agreements that are bundled, as opposed to separately stated, on the dealer's invoice for prewritten software provided in a tangible medium are subject to sales and use tax.

(c) Software maintenance agreements – charges separately stated. Separately stated charges for software maintenance agreements, when such agreements include prewritten software updates, upgrades, or enhancements delivered in a tangible medium and include support services, are deemed to be taxable at 50 percent of the software maintenance agreement's total stated sales price. The dealer may elect to use an alternate percentage if the percentage can be established to the satisfaction of the Department that the alternate percentage is based upon reasonable accounting methods. For example, the alternate percentage may be derived using the cost or estimated retail sales price of the software update, upgrade or enhancement. If it is determined that the alternate percentage used by the dealer is not based on reasonable accounting

methods, the Department shall require the dealer to remit additional sales and use tax based upon 50 percent of the stated sales price of the software maintenance agreement.

(d) Software maintenance agreements – updates, upgrades, or enhancements only. Separately stated charges for software maintenance agreements that include only prewritten software updates, upgrades, or enhancements delivered in a tangible medium, and no support services, are subject to sales and use tax on the total sales price.

(e) Software maintenance agreements – support services only. Separately stated charges for software maintenance agreements that include only support services, and no prewritten software updates, upgrades, or enhancements delivered in a tangible medium, are not subject to sales and use tax.

(f) Software maintenance agreements – custom software. Separately stated charges for custom software maintenance agreements, including software updates, upgrades, or enhancements delivered in a tangible medium, are not subject to sales and use tax.

(g) Taxed software maintenance agreements – Deductions. If a dealer has previously taxed the sale of a software maintenance agreement, and software updates, upgrades, or enhancements are not provided in a tangible medium or are not provided at all, then the dealer may claim a deduction on their sales and use tax return for the taxable amount of the software maintenance agreement. In order to claim the deduction, the dealer must be able to show that sales tax was previously collected and remitted to the Department and that a corresponding credit for all sales tax paid on the software maintenance agreement has been issued to the purchaser.

(h) Streamlined Sales and Use Tax Agreement. In the event that the Streamlined Sales and Use Tax Agreement adopts a different taxable percentage or amount with respect to software maintenance agreements, the percentage as stated in subparagraph (5)(c), as well as the ability to establish a different percentage to the satisfaction of the Department, shall be replaced with the taxable percentage or amount provided in the Streamlined Sales and Use Tax Agreement. If the Streamlined Sales and Use Tax Agreement is silent with respect to the taxability of software maintenance agreements, the provisions of subparagraph (5)(c) shall apply.

(6) Miscellaneous.

(a) Load and leave. Prewritten or modified computer software transferred to the retail purchaser by means of load and leave is not subject to sales and use tax. The transaction is not deemed to be the sale of tangible personal property when the retailer installs the computer software and the computer software does not remain permanently in the purchaser's possession in a tangible medium after the computer software has been installed.

(b) Computer-related services. The sale of a computer-related service is not subject to sales and use tax when the charge is separately stated on the dealer's invoice. If the charge for a computer-related service is bundled together with a taxable retail sale, lease, rental, license or use of prewritten computer software, then the entire charge is subject to tax.

(c) Software license agreement. The licensing of prewritten or modified computer software or the renewal/extension of such licensing agreement(s) is subject to sales and use tax as a lease or rental of tangible personal property when the original prewritten or modified computer software was delivered in a tangible medium.

(d) Prewritten computer software sold, leased, rented or licensed and delivered in a tangible medium, is exempt from Georgia sales and use tax when the transaction qualifies for exemption under O.C.G.A. §§ 48-8-3(34), 48-8-3(34.1), 48-8-3(34.2), 48-8-3(36), 48-8-3(36.1), 48-8-3(58), or 48-8-3(68).

Authority O.C.G.A. § 48-2-12.